

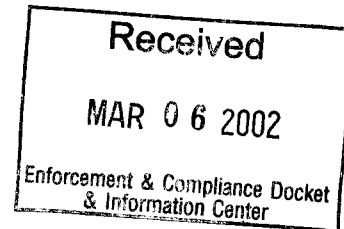


EC-2000-007  
IV-D-162

# OFFSHORE OPERATORS COMMITTEE

February 25, 2002

U.S. Environmental Protection Agency  
Enforcement and Compliance Docket and Information Center  
Mail Code 2201A  
Attn: Docket Number EC-2000-007  
1200 Pennsylvania Avenue, NW  
Washington, DC, 20460



Subject: Docket Number EC-2000-007  
Establishment of Electronic Reporting; Electronic Records  
Proposed Rule, 66 Fed. Reg. 46162 (August 31, 2001)

Dear Sir or Madam:

The Offshore Operators Committee (OOC) appreciates the opportunity to submit comments to the U.S. Environmental Protection Agency (EPA) on its August 31, 2001 proposed Cross Media Electronic Reporting and Recordkeeping Rule, otherwise known as CROMERRR, to establish electronic reporting and record keeping requirements [66 *Federal Register* 46162-46195]. OOC represents 110 member companies both large and small involved in the exploration, drilling, and production of oil and gas from the Gulf of Mexico. Our member companies are subject to a wide range of EPA regulations and are continuously designing and implementing sophisticated compliance programs, including data management systems for regulatory data collected and compiled to meet EPA's current numerous reporting and record keeping requirements. Our comments reflect several years of experience in developing electronic data transfer processes with the EPA, U.S. Minerals Management Service, and various States, and from analyses we have conducted to assess the potential ramifications and costs of EPA's proposal.

EPA's primary goal should be to implement electronic reporting and record keeping requirements that are not more complicated or burdensome than the existing paper system. The system described in the proposed rule needs to be either split into two separate rules (electronic reporting and electronic record keeping), or withdrawn and rewritten with substantial simplification in order to meet the goals set by EPA and to be useful to the regulated community and the States.

The OOC also supports comments written by the American Petroleum Institute (API) on CROMERRR which present much more detail on the impact of CROMERRR, as written, to the oil and gas industry.

## Reporting Requirements

The OOC favors EPA's establishment of a central processing system for electronic reporting, and has worked closely with the Agency since 1994 toward that end. As stated in the rule, EPA

is proposing to allow the regulated community to submit electronic documents to the agency via a Central Data Exchange (CDX) that will serve as the primary gateway for electronic documents received by EPA. It will provide data interchange, signature/certification management, transaction logging, data authentication, error checking and several other functions necessary to support data retrieval and storage for the agency. Based on the CDX architecture, EPA has proposed to use existing best practices for the exchange of confidential information over the Internet by utilizing (1) electronic data interchange (EDI) – specifically formatted (i.e., ANSI X12 standards) electronic files that would be electronically signed and submitted to the CDX via a secure environment such as a value added network (VAN); (2) extensible markup language (XML) - a subset of SGML (Standard Generalized Markup Language) and a text-based format designed to store and transmit data on the Internet; and (3) web forms - forms that would be accessed on the web and allow registered users to manually input report information that would be electronically signed and submitted to the CDX via a secure environment. The proposed rule could, technically, be implemented but not without costs and impacts to the regulated community and, particularly, to the state agencies.

Among other issues, we are concerned that the certification and signature requirements go beyond what is needed for security and validation. Also, in order for the electronic reporting option to be truly voluntary, EPA must ensure that existing reporting options are not eliminated, and that there are always practical alternatives to electronic reporting. Electronic reporting is "voluntary" only so long as there are viable alternatives. If at any point CDX submission becomes the only practical way to submit (e.g., if an existing magnetic media option were eliminated or if paper reporting were made more difficult), then it would no longer be voluntary.

Several companies already exchange information electronically with other entities via EDI and XML. Generating electronic files containing environmental data in either format would be practical and efficient for those companies with an infrastructure currently in place that supports e-business communications. Web forms, on the other hand, would require re-keying of data onto the form for submittal to EPA. This option needs to be reexamined to address the issue of redundant data entry. EPA does not specifically mention any data validation techniques that will be incorporated into the web forms to minimize the potential for an end-user to input incorrect and/or errant information. Additionally, if each state implements their own version of the CDX and associated web forms, companies may end up dealing with many different versions of web forms that are to be used for data entry.

The preamble discussion of registrations, certifications, and signatures is lengthy and complex. CDX registration, certification, and signature procedures would be burdensome and would exceed what is necessary for environmental reporting. The processes EPA describes in the rule are similar to those used for electronic financial transactions. Reporting to EPA under federal environmental requirements necessitates simpler and less onerous registration, certification, and signature procedures. EPA should reconsider and simplify these procedures.

EPA seeks comments on the need to collect and verify certain personal and business-related information as a part of the registration process. EPA discusses requiring "basic" personal information including "your name, home address, e-mail address, social security number, telephone number, credit card number, driver's license information, employer's address, common name of your employer, legal company name of your employer, name and telephone number of your direct manager, and name and telephone number of a human resource contact." OOC opposes requiring information of this detailed and personal nature. The level of information required for CDX submissions need not exceed that required for paper submissions,

which usually require basic contact information such as name, business address, and business telephone number.

EPA is proposing to design the CDX to prohibit any delegation of electronic signatures. The ability to delegate electronic signatures would be useful and practical, and EPA should try to devise a system that would allow it. It is not uncommon for a manager who signs a particular report to delegate the preparation and submission of the report to another employee.

Due to the fact that the proposed CDX infrastructure depends upon Internet connectivity, EPA needs to consider providing alternative methods for submitting electronic information during interruptions in Internet service. Providing flexibility to permittees regarding due dates of required submittals also needs to be incorporated into the rule. Communications network transmissions are prone to problems, delays, and downtime, particularly in periods of heavy traffic such as would be expected around the time of a reporting deadline.

Any existing electronic reporting to EPA and state agencies should be allowed to continue as is, and should not be incorporated into the CDX until the specific regulatory program chooses to do so. For example, the OOC recently proposed to EPA-Region VI and obtained approval for the submittal of computer generated Discharge Monitoring Reports (DMRs) in Microsoft Excel spreadsheet or Word document formats, and submittal of the Notices of Intent (NOI) for coverage and Notices of Termination (NOT) of coverage under the NPDES General Permit GMG290000 for the Western Portion of the Outer Continental Shelf of the Gulf of Mexico. The NOI and NOT forms are downloaded from EPA's web site, completed and signed for submittal. This entire process took approximately one year to design and successfully pilot test. This proposal was made out of concern from OOC member companies that many operators were not receiving their preprinted DMRs from EPA in time for completion and submittal to the agency by the due date. In fact, it has become quite common for companies permitted under GMG290000 to receive their DMR preprints after their due date. One company has also agreed to participate in another DMR pilot project utilizing XML for data transfer. To date, EPA has not initiated the XML pilot.

OOC's members welcome the opportunity to submit reports electronically to EPA as long as the system for reporting is practical, cost-effective and secure.

#### Recordkeeping Requirements

OOC strongly opposes the proposed record keeping requirements. They would be mandatory in practical effect, and would be extremely impractical and costly, with no benefits. Contrary to EPA's assertion that its proposal will "remove existing obstacles" to electronic record keeping, the proposal would seriously hinder effective electronic record keeping that is already established, and would force companies to reevaluate and rebuild major computer applications that are already in use.

Subpart C, Section 3.100 of the proposed rule lists several requirements for acceptable electronic records. A few are commented on below:

- *Electronic records or documents be "readily available, in both human readable and electronic form, for on-site inspection and off-site review, for the entirety of the required period of record retention."* In some cases, records must be kept in a central location and are not immediately available on-site (offshore production platforms and drilling rigs) for the required record retention period. Furthermore, it

is not clear how companies would be expected to make their electronic records available for off-site review by EPA, (e.g., whether EPA is suggesting that companies would need to provide the Agency with the necessary hardware and software to conduct off-site review).

- *Use secure computer-generated, time-stamped audit trails that automatically record the date and time of operator entries and actions that create, modify, or delete electronic records or documents.* Most systems currently used for environmental record keeping do not have audit trail capability, and such capability would be difficult or impossible to add to some existing systems. Most existing systems do not archive data in a manner that preserves the context of the data and the meta data. If a calculation were performed, the system would have to be capable of archiving the calculation algorithm and each element of the calculation in such a manner that it could be reproduced in a new system. Most currently available systems do not have this capability.
- *Electronic records and electronic documents be "searchable and retrievable for reference and secondary uses, including inspections, audits, legal proceedings, third party disclosures, as required by applicable regulations, for the entirety of the required period of record retention."* This requirement goes beyond the backup measures included in most computer systems. Normally, data are backed up on tape drives. As an application goes out of service, the application is removed and the data remain stored on tape drives or other storage media. In order for the electronic records to remain searchable and retrievable, an application would be required to stay on line for the entire data retention period, which could be many years.

Virtually all facilities in the regulated community now use some form of electronic data collection and record keeping. Due to the large amount of data required by government regulations (in addition to normal business data) electronic methods are already integral to the collection and management of data by industry. As a result, it is not "voluntary" to choose electronic record keeping since companies have been using computers for years to collect and manage information mandated by EPA. Many laboratory analyses are conducted using computer-based instruments and transmitted to clients electronically. The large amounts of data which must be kept for reporting purposes or to meet record keeping requirements cannot be managed without the use of computers. Reverting back to a paper based data management process would be a significant burden to our industry because current staffing levels in most companies are based on an operating budget with fewer people due to conducting business electronically and the automation of many processes.

For example, EPA recently finalized rulemaking on the discharge of synthetic based drilling muds (SBMs) under the aforementioned GMG290000 permit. The SBM discharge limitations require permitted companies to conduct several new analytical procedures which will necessitate extensive data collection and documentation of analytical data generated on the drilling rig and in onshore laboratories. In order to accommodate the additional workload, effluent data will be managed and stored on computers belonging to the operator, drilling mud suppliers, and analytical laboratories performing EPA protocol analyses.

EPA states that its proposal has three goals, and seeks comment on how well the proposed regulatory provisions and the associated Central Data Exchange (CDX) will serve to fulfill the three goals:

- To reduce the cost and burden of data transfer and maintenance for all parties to the data exchanges;
- To improve the data - and the various business processes associated with its use - in ways that may not be reflected directly in cost-reductions (i.e., through improvements in data quality, and the speed and convenience with which data may be transferred and used); and
- To maintain or improve the level of corporate and individual responsibility and accountability for electronic reports and records that currently exists in the paper environment.

OOC generally agrees that the first two are appropriate goals for programs that address electronic reporting and record keeping. The proposal is directly contrary to EPA's first goal, in that it will impose high costs on the regulated community, including many small businesses, and on States. The proposed regulations contain no provisions that address the second goal of data improvement. In fact, the record keeping portion of the proposal has the potential to adversely affect data quality, because it would force companies to make changes to existing computerized systems, which would increase the risk of lowering data integrity that could arise from transferring data from one system to another. The proposed rule would also impose expensive mandates on State and local agencies, and would impede electronic reporting that is already underway. With regard to the third goal, however; corporate and individual responsibility and accountability currently exist in the electronic as well as paper environment. Furthermore, EPA has not demonstrated any need to improve the level of corporate and individual responsibility and accountability in current reporting and record keeping programs. EPA must recognize that the current environment is not "the paper environment." Particularly in the area of record keeping, the current environment is, overwhelmingly, an electronic environment. The proposed record keeping requirements are not necessary to maintain the current level of corporate and individual responsibility and accountability, particularly if EPA wants to assure what it calls "the continuing viability of self-monitoring and self-reporting that provides the framework for compliance under most of our environmental programs." The anti-fraud provisions in CROMERRR need to be reassessed with consideration given to the actual fraud cases litigated by the courts. The Government Paperwork Elimination Act (GPEA) addresses mainly electronic reporting and electronic signatures. It also directs agencies to provide the option of electronic record keeping, but with no mandate to develop excessive anti-fraud provisions such as those found in CROMERRR, as written. EPA should not hinder the electronic reporting and electronic signature provisions of CROMERRR with the problems of the record keeping provisions. Doing so would make it impossible for EPA to meet the GPEA's October 2003 deadline.

### Costs

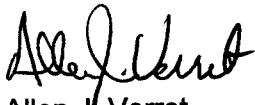
This proposed rule, which EPA has presented as voluntary, would cost the regulated community several billion dollars and also would impose high costs on States. EPA has not demonstrated any need for the proposed record keeping requirements or proposed criteria for States. The work required to change existing systems in order to comply with the proposed record keeping requirements would be comparable to the level of effort needed to fix the Y2K computer problem. EPA estimates that a compliant "low-end" electronic record keeping system would cost \$40,000 initially and \$17,000 annually. Using EPA's cost figures and its estimate of 1.2 million facilities with EPA record keeping obligations, the initial cost of the CROMERRR record keeping provisions would be \$48 billion, and the annual costs would be \$20 billion. Those estimates are likely to be very low in most cases. A more realistic cost estimate is over \$150,000 per facility as determined by the American Petroleum Institute.

OOO opposes EPA's proposal to provide criteria for States' electronic reporting systems. We believe States can - and in some cases already do - implement adequate reporting systems without mandates from EPA.

Finally, EPA's proposal falls short of meeting requirements of Executive Order 12866, the Paperwork Reduction Act, the Regulatory Flexibility Act, the Small Business Regulatory Enforcement Fairness Act, the Government Paperwork Elimination Act, the Un-funded Mandates Reform Act, Executive Order 13132, and Executive Order 13211. EPA's failure to fulfill these requirements stems from the incorrect premise that the proposed requirements would be voluntary and, thus, would not impose costs on the regulated community. The proposal would be very costly and burdensome for the Agency, the regulated community and the States. It is overly complicated and adds unnecessary obligations to electronic records that do not exist in the paper process. EPA needs to incorporate input from the regulated community to gain proper perspective on the impact of CROMERRR to industry and design a process that would truly be beneficial to all parties involved.

If there are any questions or if additional information is requested, please call Mr. Don Evans at (504) 561-2497.

Yours truly,

A handwritten signature in black ink, appearing to read "Allen J. Verret", is positioned above the printed name.

Allen J. Verret  
Executive Director  
Offshore Operators Committee